

## BOARD OF ZONING APPEALS MINUTES

A regular meeting of the Farmington Board of Zoning Appeals was held on Wednesday, July 6, 2011, in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 1976.

Chairperson Buyers called the meeting to order at 7:02 p.m.

### ROLL CALL

**PRESENT:** Buyers, Christiansen, Dompierre, Kmetzo.

**ABSENT:** Bennett, Majoros.

**CITY OFFICIALS PRESENT:** Building Inspector Koncsol, Director Gushman.

Chairperson Buyers inquired on the status of Commissioner Majoros' attendance at the meeting.

Christiansen suggested business items on the agenda be taken care of first to allow ample time for his appearance and then address the appeals.

### MINUTES OF PREVIOUS MEETINGS

MOTION by Dompierre, supported by Kmetzko, to approve the minutes of the previous ZBA meeting of June 2, 2010. Motion carried, all ayes.

MOTION by Christiansen, supported by Dompierre, to approve the minutes of October 7, 2009 ZBA meeting. Motion carried, all ayes.

MOTION by Christiansen, supported by Kmetzko, to receive and file the minutes of the Planning Commission meetings of June 14, 2010, September 13, 2010, November 22, 2010, February 14, 2011, March 14, 2011, April 21, 2011 and May 9, 2011. Motion carried, all ayes.

Chairperson Buyers indicated he visited the property of Marc Pouliot, 23973 Farmington Road, this afternoon to view the property and did so with the Petitioner.

Chairperson Buyers informed the petitioners that there was not a full Board this evening so no action could be taken on matters unless three out of the four members present agreed on the matter. He further stated that petitioners could table the request until the next meeting if so desired and would ask them further as to which direction they would like to take.

**APPEAL OF:** Marc Pouliot  
23973 Farmington Road  
Farmington, MI 48336

Chairperson Buyers stated Mr. Pouliot is requesting a variance to Sec. 35-38(b)(2) to allow for the parking and storage of a 12 ft. enclosed cargo trailer along the north side of

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the house forward of the rear building line. City code directs that all vehicles and equipment be parked in the rear yard.

Chairperson Buyers inquired of the Petitioner if he was proceeding with his appeal with a four-member Board and Petitioner responded in the affirmative.

Petitioner addressed the Board indicating he was a carpenter by trade and has tools and other equipment in the trailer that he needs with him in the course of his employment. He also stated when possible he leaves the trailer at the job site if it is a secure environment since the trailer doesn't fit in his garage. He indicated current parking of the vehicle is such that it stays as far to the side drive towards the rear as possible, well behind the front line of the house at all times, and that alongside of that driveway there is a large willow tree that also helps hide the view of same. He stated that behind the drive the property begins to narrow and it is almost impossible to get the trailer to the rear of the property without encroaching upon the property line. The trailer weighs in excess of 2,000 pounds and has to be on a paved surface at all times, especially in the spring and fall. There is also a slope that changes and the grade of the land falls to the back towards the river and then falls away towards the neighbor's property. It would require regrading in order to get the trailer further back. The neighbors on that side are elderly, have a lawn service and a retaining wall that goes across the entire back yard, so the service has to use that area to access their backyard.

Chairperson Buyers indicated that correspondence was received from the McDunnell's at 24006 Merrilyn Court, stating no objection to the variance; the De Meester's at 24060 Le Quinne Court, stating approval to the variance; Joseph Pichler at 24034 Merrilynn Court stating an objection to the request; Robert Abraham at 24039 Merrilynn Court objecting to the variance; Brandon and Beth Seelbach at 24025 Farmington Road, stating approval to the variance.

Chairperson Buyers opened questions to the Petitioner.

Dompierre inquired as to weight of trailer and Petitioner responded 2,200 to 2,300 pounds.

Chairperson Buyers asked Petitioner if he had tried to park the trailer in the garage and the response was in the negative as the trailer is taller than the garage door.

Kmetzko asked Petitioner how long he had owned the trailer and how long he had been parking it; the response was three years.

Christiansen stated that reading through Petitioner's information, one of the reasons or comments made by the Petitioner as the basis for the requested variance is the inability to place this in the rear yard due to existing conditions, that the property in the rear would have to be regraded, and due to weight of trailer a hard surface would have to be provided to access the rear; the other issue being the inability to provide screening on the retaining wall to comply with the ordinance and the basis for that is denying access for the neighbors to have a lawn service.

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Petitioner expounded on the limitations he is faced in complying with the ordinance, including having the Rouge River in his backyard.

Further discussion was held regarding Petitioner's constraints and available alternatives.

Chairperson Buyers inquired if it was possible for the Petitioner to lawfully park this recreational utility trailer at the far rear corner of his property, that being the southwest corner, subject to staying away from the property line by 5 ft. However, Gushman indicated that the flood plane was involved and would provide another obstacle.

Christiansen stated that looking at the criteria under which variances are to be granted that come before Board, the Petitioner has to substantiate the basis for the variance request such as practical difficulties, substantial justice, public safety and welfare, not self-created, no safety hazard or nuisance, relationship to adjacent land uses and minimum variance necessary. In looking at all of those, he was concerned that it doesn't appear that other alternatives were explored. He said perhaps the Petitioner could park the trailer off site, i.e. at a commercial storage facility. Other options would be to place it within an enclosed structure or extend the concrete drive to wrap around the house. But with the retaining wall situation and the landscape company's access this may not be viable.

Further discussion was held regarding other alternatives available to the Petitioner.

Petitioner responded to the alternatives cited and indicated that he doesn't know how to design an enclosed structure that would not detract from the value of the neighborhood; that parking offsite is not always available in a secure environment and had previously had a work van that had been broken into in the past and lost \$6,000 worth of tools; that such alternatives would be burdensome. He also stated that living right on Farmington Road creates a special circumstance, especially in light of the Rouge River being in his backyard, that it changes the dynamic of how the property is used.

Christiansen inquired if an addition to the garage had been considered and Petitioner responded he couldn't afford to consider that option at this point.

Christiansen explained one of the challenges of the ZBA is that the Board does not deal with economics in consideration of a variance request, but must consider ordinance requirements that must be met in order to grant same.

Further discussion was held concerning limitations that could be attached to the variance; Gushman responded that conditions could be attached to the current property owner and not travel with the property.

Chairperson Buyers asked Koncsol if the trailer could be deemed commercial versus recreational, and he responded that with some type of advertising on it, the trailer could be put in that category.

Kmetzko inquired of Petitioner if he had thought of any alternatives if the variance is not granted and Petitioner responded that he has thought about that but not come up with any good solutions.

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Further discussion was held concerning shrubbery being planted on the property to alleviate the visual impact to passersby and neighbors, that the property itself has unique characteristics to grade and slope and the pie-shaped nature of the property. It was pointed out that specific conditions could be placed on the variance petitioner in order to grant the variance.

Christiansen suggested that screening landscaping at a height and close proximity to each other was an option. Also, if the tree was removed and an extension of the driveway was installed, that might provide an alternative.

Christiansen stated there was a unique circumstance presented with this request, which is part of the criteria in granting the variance but exploring other alternatives should be looked into before doing so.

Chairperson Buyers suggested tabling the Petitioner's request for a sufficient period of time so the Petitioner can explore additional options and further demonstrate and substantiate the lack of alternatives to requested relief.

Kmetzko inquired if a temporary variance would be granted while the Petitioner explores other options and Christiansen indicated it would be a stay with no further action.

Buyers confirmed that a request for a variance and consideration by the Board acts as a stay; Koncsol agreed.

Petitioner decided to table the request until such time as other alternatives were explored.

MOTION by Christiansen, supported by Dompierre, to table the request for variance to Sec. 35-38(b)(2) to allow for the parking and storage of a 12 ft. enclosed cargo trailer along the north side of the house forward of the rear building line at 23973 Farmington Road until the next meeting. This would allow the Petitioner an opportunity to explore alternatives that had been discussed. Further, he should review his request with Mr. Koncsol with respect to proximity to the side lot line and provide additional information to the Board as mentioned this evening regarding screening and landscaping for the trailer. Motion carried, all ayes.

APPEAL OF:                    Raymond Niemenski  
                                     22449 Maple  
                                     Farmington, MI 48336

Chairperson Buyers stated that the Petitioner handed him several photographs and documents relating to the appeal. He indicated two variances were requested by the Petitioner:

- Request for variance to Sec. 35-49h(2) to allow for 52' of 6' vinyl fencing to be installed parallel to the sidewalk on Freedom Road. Sub-section (2) limits corner lot fencing to no higher than 4'.

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- Request for variance to Sec. 35-49h(4) to waive the landscaping requirement. Sub-section (4) states that landscaping material be provided if the proposed fencing is anything other than vinyl-coated picket or wrought iron picket.

Petitioner addressed the Board indicating he moved into the neighborhood a year ago, is a single dad and has two young children. He is requesting a variance to have a vinyl fence installed along the sidewalk on Freedom Road a block east of Farmington Road. It is a unique corner lot as his neighbors are Freedom Road and the freeway. There's quite a bit of traffic on the sidewalks, a lot of dog walkers, bicyclists, a good deal of traffic and noise, and he's looking for security for his children. Night lighting is bad because of all the trees and he feels that a 4 ft. fence is not secure enough. He is looking for privacy and noise reduction by installing a 6 ft. fence. He said it would be an improvement to the subdivision because it is a very busy street. The vinyl fence, specifically the Tahoe I style, is actually a secure private fence that is nice looking and would add a lot to the corner. He again stressed that his main issue is security. He stated one alternative would be a 4 ft. fence with foliage but he is trying to reduce the amount of trees and have a clean, open and secure lot. He will install lighting if the variance is granted.

Chairperson Buyers indicated that correspondence was received from Benno and Shirley Schmidt, 22483 Maple, Farmington, who indicated their approval to installing the fence requested, but noted this deviation from code does not release the property owner from normal required maintenance responsibilities for the side yard on both sides of his new fence and the adjoining boulevard.

Chairperson Buyers asked for clarification of the request and Petitioner responded he would like a 6' fence along the 44 ft. of his property parallel to the sidewalk, then go north to the semi-private fencing on his patio, not to the house itself.

Christiansen also questioned the Petitioner on the drawings and photographs submitted.

Koncsol responded to the query from Christiansen and explained that the ordinance recognizes corner lots and the parallel yard on the side as a secondary front yard. Therefore, per the ordinance, it says 4 ft. fencing is allowed there if it's wrought iron or wrought iron vinyl picket. If a fence other than picket is utilized, some type of evergreen or vegetation must be planted to break up the wall.

Christiansen asked why a waiver of the landscape requirement was requested. Petitioner admitted some confusion on the landscape requirements.

Christiansen stated that if a 6 ft. fence was allowed to be installed but the ordinance requires that evergreens a minimum of 3 ft. tall be planted along the exterior facing Freedom Road, one every 5 ft., because the material is not wrought iron or vinyl coated.

Further discussion was held concerning landscape requirements and the Petitioner acquiesced to the landscape requirements and withdrew the second variance request.

The existing chain link fenced on the lot was discussed and its proximity to the path and where the new fence would meet up with it.

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Christiansen asked Koncek if some modification of the landscape requirement can be considered in light of the limited space for evergreens.

Koncek indicated he was not adverse to that.

Further discussion was held on alternatives to evergreens.

Chairperson Buyers stated that as far as practical difficulties go, the variance request hits the mark. It is not a typical corner lot. Further, the ordinance is written for a subdivision with quiet streets and bicycles peddling by. Petitioner has a raised highway within a 100 ft. or so with cars and noise, plus a main street consisting of Freedom Road immediately to the south. It is not a typical cookie cutter corner lot. The practical difficulty due to the uniqueness of this property is evident and coupled with the landscape requirement, he is comfortable with the request.

MOTION by Christiansen, supported by Kmetzko, to grant Petitioner's request for a variance to Sec.35-49h(2), to allow for 44 ft. of 6' high vinyl fencing to be installed parallel to the sidewalk on Freedom Road at 22449 Maple as shown on the submitted drawings. The variance is granted on the condition that the Petitioner provide the required landscaping which will be coordinated with the staff in terms of the overall landscape plan, the type of landscaping and the placement thereof, thus eliminating the Petitioner's second request for a variance to Subsection 35-49h(4) to waive the landscaping requirement. Granting of the variance is given on the basis that the Petitioner has substantiated there is a practical difficulty with meeting the requirements of the ordinance due to the unique location on a corner lot; that the property is in close proximity to a very heavily traveled road on the side of the house where the fence is proposed, which is both a service drive and freeway type road with heavy traffic; that the 6' tall fence as proposed is necessary in order to effectively screen and provide privacy for his house and his rear yard; that the fence will not negatively effect the substantial justice enjoyed by other properties in the district since this is a unique corner lot and with the conditions of the road it creates a unique circumstance with this specific property; that the variance does not generally impair the intent of the ordinance or compromise public safety and welfare; does not create any public safety issues; that the variance is not self-created but due to the unique location of the lot in proximity to the road, that in order to comply with the ordinance and place the fence along the side property line would eliminate a substantial portion of the rear yard of his home; that the granting of the variance will not increase any safety hazard or nuisance with respect to public safety or create a public nuisance; that the variance will not negatively affect the relationship to adjacent land uses; and that it is the minimum variance necessary for the Petitioner to enjoy the use of his property.

Koncek suggested including in the motion to tie the 2 ft. minimum dimension from the side of the sidewalk that is parallel with Freedom Rd.

Christiansen amended the motion to include the fence as shown in the drawing submitted by the Petitioner be placed at a 2 ft. setback from the south property line or the adjacent sidewalk along the south side of the property, such that the fence will be 2 ft. into the Petitioner's property for its entire length where it's intended to connect to the existing fence along the rear lot line.

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Chairperson Buyers further clarified that the motion included approval of a 44 ft. span and the Petitioner has requested a 52 ft. span; he indicated 44 plus otherwise and inquired if the motion needed to include that extra span.

Christiansen amended the motion to a total of 52 ft., 8 ft. from the existing fence, 2 ft. from the sidewalk, and then 44 ft. going west along the south property line, offset 2 ft. to the rear lot line.

Further discussion was held on the amendment.

Dompierre stated that he would add to the motion that Petitioner maintain the landscaping to acceptable standards so that it doesn't overgrow the sidewalk.

Christiansen amended the motion to include that Petitioner maintain the landscaping to acceptable standards.

Chairperson Buyers inquired if there was further discussion on the motion. None being heard, motion carried, all ayes.

### PUBLIC COMMENT

No public comments were heard.

### COMMISSION COMMENTS AND ANNOUNCEMENTS

None heard.

### ELECTION OF OFFICERS

MOTION by Christiansen, supported by Kmetzko, to maintain the current officers of the Zoning Board of Appeals for 2011-2012. Motion carried, all ayes.

### ADJOURNMENT

MOTION by Dompierre, seconded by Christiansen, to adjourn the meeting. Motion carried, all ayes.

The meeting adjourned at 8:52 p.m.

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John D. Koncsol , Building Inspector